

February 24, 1998

Col. Leo W. Haseman
Director, Division of Enforcement
Minnesota Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4047

RE: In the Matter of the Appeals of the Trespass Citations Issued to Robert James Mausolf and Joseph Paul Mausolf; OAH Docket Nos. 6-2000-11510-2 and 6-2000-11509-2

Dear Colonel Haseman:

A prehearing conference telephone call in this matter took place on February 18, 1998, among myself, Conservation Officer Tyler Quandt, Robert Mausolf and Joseph Mausolf. As a result of the facts gathered in that telephone conference call, I am recommending to you that the citations issued to the Mausolfs be dismissed. The basis for this recommendation is set forth below.

On November 8, 1996, the brothers Robert and Joseph Mausolf set out to hunt pheasant. They first went to the property of one John Byers, talked with Byers and his wife, and got permission to hunt on the Byers' property. In the course of the conversation, the Mausolfs asked Byers about access to neighboring property, owned by one Gene Almquist. Byers told them that the adjoining property was owned by Almquist, but that Almquist wouldn't mind if they hunted there. The Mausolfs proceeded across Byers' property and onto Almquist's property.

Conservation Officer Tyler Quandt happened to be in the area of the Byers/Almquist property, and saw the two hunters in Almquist's CRP field. Quandt had received complaints from Almquist in the past about deer hunters in Almquist's fields, and so when Quandt saw the two hunters there, he stopped them and asked whether they had gotten Almquist's permission to hunt. They stated that they had not gotten Almquist's permission, but that Byers had told them that Almquist would not mind if they were hunting there. Quandt issued citations to them for being on Almquist's property without permission.

The Mausolfs then called Almquist and explained what had happened, and asked whether he would sign a letter regarding their misunderstanding of Byers' authority to give permission. Almquist agreed to do so, and the Mausolfs prepared a letter, dated November 19, 1996, which contains both their appeal of the citations and recitation of the facts, in one section, and contains the following statement, in a separate section of the same letter:

I, Gene Almquist, agree to drop the trespassing charges
against Robert and Joseph Mausolf.

s/Gene Almquist

When the Mausolfs took this to Almquist for his signature, he did sign it, and told them that he and Byers went to the same church and he had once told Byers that "any friend of yours is a friend of mine, and they can hunt on my land". More recently, Almquist has allowed the Mausolfs to hunt deer on his land.

I am recommending that the citations be dismissed because I do believe that the Mausolfs have learned a valuable lesson from this experience, and that they honestly believed that Byers had authority from Almquist to grant them permission to hunt on Almquist's land. The story that they told during the conference call is the same story that they told Quandt out in the field on the day of the violation. It is not some "cooked up" tale that was created just to get out of these citations. The Mausolfs understand that Quandt was just doing his job when he issued the citations, and they indicated that they harbored no hard feelings toward any of the people involved in this incident. Under the circumstances, I recommend that the citations be dismissed.

The law provides that the final decision in this matter must be made by the Commissioner (or his designee). It also provides that before he makes that final decision, he must wait least five days after receipt of this recommendation, and the Mausolfs may, within that five days, make any comments to him on the recommendation for his consideration. The law does not require, however, that the Mausolfs make comments. The Commissioner must, however, send a copy of his final decision to the Mausolfs.

Respectfully submitted,

ALLAN W. KLEIN
Administrative Law Judge
Telephone: 612/341-7609

AWK:lr
Enclosures
cc: Robert James Mausolf
Joseph Paul Mausolf
Tyler Quandt